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In Re Capper Resolution

H. H. Wolff

William E. Sweet

maintained against a person by reason of the lapse of time, an action thereon cannot be maintained against him in California except in favor of one who has been a citizen of California and who has held the cause of action from the time it accrued. In other words, if a cause of action is barred in another State, where the Statute of Limitations of that other State fixes a shorter period of limitation than the laws of California, the action is barred in California unless the claim be held by a citizen of California who has held the claim or cause of action from the time it accrued.

In Re Capper Resolution

March 12, 1928.

H. H. Wolff, Esq.
1515 E. 9th Avenue,
Denver, Colorado.

My dear Mr. Wolff:

My friend, Carl Whitehead, handed me a copy of the March issue of the Denver Bar Association Record, containing an article in reply to Frazer Arnold. I turn first to your debate with Doctor Nicholas Murray Butler, and find it most interesting because it shows how utterly futile it is to try to come to any agreement between two men, one of whom would make so many reservations in interpreting the Capper resolution that its passage by the Senate would mean nothing, and the other, who is so fully committed to the war system that he would not entertain any proposal to avoid war which, in his estimation, would affect the "honor, the safety and the welfare of his country." I wish to congratulate you on the completeness of your reply to Doctor Butler. In my judgment, the reason you have not heard from him in answer to your letter is because there is no reply to make. He tries to defend the Capper Resolution by reading into it something that is not there, and you point this out conclusively.

Of course, Mr. Wolff, you must concede that under your defense of war there can never be a proposal made which will "lead us forward", to use your expression. The only way out of war is to renounce it as an instrument of national policy, to outlaw it. This is Briand's proposal, and the reason why Secretary Kellogg did not answer this proposal with equal frankness is because America is not yet ready "to renounce war as an instrument of national policy" It is perfectly clear that the *causes* of war can never be removed. Nations, as with men, will always fall out, dispute and quarrel, but if war is ever to be abolished these nations must agree, as with men, that they will *never* go to war about their difficulties. Gun-play between men, either in the defense of property or in its acquisition, has been outlawed. Between nations force is still honored, respected and made perfectly legal under national law.

There are two types of men opposed to the Capper Resolution, one whom Admiral Plunkett well represented in his late declaration that "the penalty of national efficiency, either in commerce or in arms, is war." "If I read history aright," he says, "we are nearer war today than ever before, because we are pursuing a competitive trade policy and crowding other nations into the background. A policy of this kind inevitably leads to war." I recently rode from Denver to Colorado Springs with a former Colorado banker who defends Admiral Plunkett's position absolutely. This is the policy of the United Fruit Company, whose manager

told me some years ago that if Costa Rico should impose what they regarded was an excess export tax on bananas they would call on Uncle Sam to maintain their position. If an administration can be elected in harmony with this idea the United States will embark upon a career which will make us "respected" the world over. I am sure you know I am not over-stating this position. It is held by the Chicago Tribune, a journal of large influence, and is the opinion of millions of our citizens.

The other type of man opposed to the Capper Resolution is largely a sentimentalist in his peace policy. He hears Doctor Shotwell, or Miss Maude Royden, or Doctor Butler, and he is thrilled with the idea of world peace, and these addresses are to be commended for they keep the subject of peace constantly before the people. But this idealism is largely ineffectual, except for educational purposes, and in his pious opinions about peace he is apt to be self-deceived. He wants to get rid of war by "tapering off". In peace times he waves the olive branch but when war clouds thicken he has little difficulty in convincing himself "that the welfare of his nation demands that war be made." He does not sit quietly down, as you have done, and count the cost which must be paid by the American people if war is to be abolished.

I know what you will reply to this letter. It will be about as follows: "This man Sweet is utterly lacking in patriotism. He is a pacifist and as such should be handed over to the tender mercies of the American Legion," or: "Sweet believes in a *little* nation." No, Mr. Wolff, I believe America can cover the sea with her commerce, and loan money to every nation that has the security to offer, and be, in the best sense of the word, a great nation. I believe that America, without the slightest risk to her honor and future welfare, can decide *now* what she would do whenever any question which might lead to war arises. I stand foursquare on the Capper Resolution with all the implications which you point out.

Your position can never rid the world of war, and as long as you hold to the force doctrine it is idle for you, and men who think as you do, to consider the abolishment of war. On the contrary, you must admit that the plan of outlawry, as proposed by France, will rid the world of war. You, however, are not willing to pay the price in so-called national honor and future welfare. We have been working under your hypothesis since the beginning of civilization and with no great success. It is only since the world war that outlawry has been discussed. The idea is growing rapidly, both at home and in Europe, as is indicated by Senator Capper's Resolution in reply to Briand's proposal. But America, growing richer and more powerful every day, will not accept this idea, in my opinion, in this generation.

Yours very truly,
(Signed) WM. E. SWEET.

March 12, 1928.

H. H. Wolff, Esq.
1515 E. 9th Avenue,
Denver, Colorado.

My dear Mr. Wolff:

Your illustration of the Monroe Doctrine, in your reply to Doctor Butler, expresses exactly what Doctor Butler means when he said that "In the United States the Monroe Doctrine has been expressed in so many different forms that no one can be sure as to what it really means." If you will carefully read President Monroe's message you will see that he was concerned *primarily* with the safety and preservation of the political institutions of the new Republics which had

just recently been established after throwing off the Spanish yoke. He refers explicitly to the fact that "Spain can never subdue them" and says, "It is still the policy of the United States to leave the parties to themselves with the hope that other powers will pursue the same course." President Monroe did not proclaim this doctrine to make sure that our "national security should not be jeopardized", much writing and oratory to the contrary notwithstanding.

President Monroe was peculiarly interested in perpetuating democratic institutions which had found root in the Western Hemisphere, and he warned the allied powers against trying to overthrow them. His reference to the extension of "their system to any portion of this Hemisphere as dangerous to our peace and safety" refers to the political institutions of the United States and not to its territory.

I ask you, since when has any European power sought to destroy democratic and republican institutions, either in the United States or anywhere in this Western Hemisphere? What is more, these same powers have in recent years become more and more democratic. One may stand by the Monroe Doctrine as initiated by President Monroe, but be opposed to the Cleveland, Lodge, Roosevelt, Coolidge view of it.

Your reference to the challenging of the Monroe Doctrine by one of five nations "through the colonization of a large tract of land with a good harbor in a neighboring country close to our border", sounds like a Hearst editorial. This fact, if true, is no more challenging to the Monroe Doctrine than the recent visit of a group of Japanese statesmen to the United States, or the visit of Lord Robert Cecil and Ramsay MacDonald, of England.

Some day this doctrine, which, because of evolutionary processes of history has long since outlived its usefulness but has become the pretext for much American jingoism, will be formally repealed or discarded by the United States in the interests of harmony and good will among the Latin American Republics. The so-called violation of the Monroe Doctrine has been the means of perpetrating a vast amount of political bunk upon the American people, largely for personal purposes.

Yours very truly,

(Signed) WM. E. SWEET.

April 7, 1928.

Hon. William E. Sweet,
U. S. National Bank Building,
Denver, Colorado.

My dear Governor Sweet:

Your two valued letters of March 12th concerning my correspondence with Dr. Butler about the Capper resolution should have had earlier reply but for a somewhat extensive business trip from which I have recently returned.

Referring to your assumption that my answer would be disparaging to you personally, please be assured that I rate such discourtesy most reprehensible and as an argument self-destructive.

You make a number of statements which you do not offer to support with reasons. I know that with many people assertions are very effective. Thus Voliva, of Zion City fame, asserts and reasserts that the earth is flat and he has many followers. But it can hardly be called argument. As for Secretary Kellogg, he does not need me to defend him but it may well be that his reasons are other than you so definitely assume. I do not concede that the future may not reveal some acceptable method of avoiding war because I am no seer and can not read the future. I do not accept your assertion that

"the only way out of war is to renounce it as an instrument of national policy, to outlaw it," because you attempt no proof that it is the only way nor, indeed, that it is a way at all and I do not admit, as you demand of me, that the plan proposed will rid the world of war because, on the contrary, I intend to prove not alone that it can not do so but that it will make matters worse.

Quoting Webster's dictionary: "To renounce is to make an affirmative declaration of abandonment."

The Founder of our Christian civilization did not renounce force but on the contrary employed it aggressively in a righteous cause when He cleared the temple with the lash. It can not, therefore, in itself be wrong.

It is impossible for anyone fit to be called human even to conceive of abandoning force in defending himself, his family, his home unless these are defended by outside force. I challenge you to say that you have done so. Unless you can truthfully say that you will let a criminal tear your wife or daughter from your side and that you will not use force to protect her, to the point of killing if need be, you have not "renounced force as an instrument of policy".

Nations are but men collectively and it is impossible for a group to think that which the individuals composing the group do not and can not think. If individuals can not think without a background of force when needed, then collections of these individuals can not do so and a proposal based upon an impossibility is of course impossible. Nothing further is needed to show the utter futility and absurdity of the whole scheme.

But let us analyze a little further. You say that nations must agree never to go to war. I say that they must do incomparably more than that. They must keep the agreement. I can cite you broken agreements where big issues were involved from the days of the Greek gift-horse to the Trojans down to the tri-partite "scrap of paper" which guaranteed the integrity of Belgium. What have you to offer in the way of agreements kept?

You say "nations must agree, as with men, that they will never go to war about their difficulties." Men customarily make written contracts which would correspond to the treaties which you favor. To this extent your analogy holds. But behind these contracts are the courts, and behind the courts are the police, and behind the police is the militia, and behind the militia is the regular army of the United States. What do you propose to put behind your treaties? Nothing of the kind is proposed in the Capper resolution.

If, then, there is no outside protection and we in good faith should abide by the agreement, what in your opinion would happen if the other party to the agreement should break it and attack as has been done so consistently since the dawn of civilization until fourteen years ago? Or do you assume that human nature has changed completely in these fourteen years and upon such a preposterous assumption ask us to gamble away our safety and prosperity?

By your own statement the causes of war can not be removed. Yet without removing the causes you expect to prevent the effects of those causes, and you believe it possible to do this with a formula of words.

I have often heard men say that wars are due to the stupidity of statesmen. Yet these same men would put these same statesmen about a table and by combining their stupidities make wisdom. I apologize for thus paraphrasing the words of a great philosopher, even though this philosopher lived only in fiction.

All of the foregoing and all that follows is based on the assumption that the Capper resolution means just what it says, that war, all war, is to be renounced, and that there is to be substituted for resistance by force, actual or implied, the gentler method of negotiation and conciliation, with arbitration as the last resort, be the demands just or unjust, and of whatever nature and without exception. Dr. Butler denies this but you accept my statement and say: "I stand foursquare on the Capper resolution with all the implications which you point out." The examples which I chose in my letter to Dr. Butler and to which you referred in the sentence just quoted concerned the debt settlements, our tariff, the Monroe Doctrine, prohibition, our immigration laws. You agree that any or all of these questions may come up for arbitration. They are all political, not judicial, and are of the general type of questions that bring on war. We are not concerned with questions that do *not* bring on war. If, then, we intend to avert war by arbitration when we can not come to agreement by direct negotiation, it follows that the arbitrator must have full power and authority to decide.

I can understand that people may differ on the tariff, on prohibition, and on the other questions, but I can not understand any one who would wish these matters left to foreign determination. If this were to be done it would mean nothing less than foreign control of the domestic affairs of this country, for all of these essential questions would be "arbitrated" as effectively as they are now legislated by the Congress. And under your hypothesis we would have no recourse.

How could an arbitrator be selected? To name the question and the arbitrator would be practically equivalent to naming the decision. In the immigration question, if Great Britain or any of her colonies were chosen the decision would be in our favor because their interests parallel ours. If Italy, Japan, Germany, Poland, Austria, Jugo-Slavia, or any one of the Balkan countries were picked, the decision would be against us. On the tariff I believe Canada and Australia would be with us, but woe betide us if ever one of the big industrial nations of the world could dictate! With our wealth the greatest prize the world has ever seen, how long would it be before all those countries would have a quiet little understanding among themselves on how best to pick our feathers?

I have tried to establish, and I trust successfully:—

First, that all schemes based upon a voluntary and continued abandonment of force are impossible because based upon an inherent fallacy.

Secondly, that all schemes based upon the voluntary and continued good faith of the parties to an agreement are predestined to fail because there is nothing in history or in nature upon which to base a reasonable hope that such agreements will be kept.

Thirdly, that any scheme under which we place ourselves, our territory, our institutions, our wealth, our home markets, our domestic laws, any of which in any way are a temptation to foreign nations, at the mercy of such foreign nations will most certainly prove disastrous to us, for we have everything to lose and nothing to gain.

Fourthly, that even if we were willing to take such desperate chances under the guise of arbitration, it would be almost impossible to agree upon an arbitrator.

I wish now to add, as a fifth proposition which is in a sense a corollary to the other four, that the consequences of the inevitable failure of the Capper scheme must be to aggravate antagonisms and to create new causes of friction and dispute between nations,

that thereby the likelihood and frequency of war would be much increased and that herein lies one of the most serious objections to all schemes of this kind. For each nation believing itself honest and fair and its opponents treacherous and dishonest, often with no cause other than a different point of view, may easily become inflamed, stubborn and uncontrollable by its leaders. We have seen this amply demonstrated in the aftermath of the world war, when the panacea of the League of Nations raised the hopes of peoples to the heights of ecstasy only to have failure dash them into the trough of despair from which they are but now emerging into the realm of common sense. For Fiume could not be given to both Italy and the Slavs, nor a Polish corridor to the sea established without dividing Germany, nor Shantung be bestowed upon both China and Japan, and justice as seen by each of these pairs of nations required that all of these be done.

It is unfair, untrue and unjust to intimate that I, and such as I, favor or defend war as an end in itself because I say that up to this time no practicable plan has been proposed to prevent it and that the one we are discussing will tend rather to cause than to avert it. As well accuse me of arson because I would prevent you from throwing gasoline on a fire to extinguish the flames.

Like every other sane man I dread war, its cruelty and destruction and I would continue and extend those legitimate thoughts, principles and deeds which will relegate it more and more into the background. Such are international courtesies and good manners, fair play and a willingness to see from the other nation's point of view, concession even to the point of generosity, and as great a contact and intermingling of the various nationals as possible for their better acquaintance and understanding. But I would not, for the disease of war, attempt any patent medicine cure-all nor risk a preparation that may be only poison.

I said that it is unfair to accuse me of favoring war as such, but you may truly charge me with believing that war is often the lesser of two evils and should then rightly be waged. Do you or do you not agree with me in this? If you do, then all differences between us on this score are but differences of degree as exist between all men and each instance may find either of us on either side, for very possibly you might favor a war that I should utterly condemn. But if, on the other hand, you insist that war is always wrong, that it must always be avoided, at any price and whatever the consequences, then indeed we differ hopelessly in principle, for you would see your country invaded and not resist, you would see women raped and children slaughtered and not fight, you would fatuously seek peace where there is no peace. And if ever the larger portion of our male citizens should come to be of this mind, whether through self-righteousness or through laziness, cowardice, self-indulgence and the other evils of luxury, or through the increasingly strong movement to effeminize the manhood of the nation, then indeed it is as inevitable as that night shall follow the day that, unless our women rise up to protect us, our beloved nation must succumb even as great Rome fell from the same causes and false philosophies, philosophies as old as history itself, with the same recurrent results, that each new set of "idealists" and "serious thinkers" resurrects from the ash heap as something beautiful and new.

There remains but to reply to your discourse on the Monroe Doctrine. I wonder by what course of deduction you arrive at the conclusion that Monroe's concern was *primarily* for the maintenance of the new form of government in the Latin American re-

publics as an ideal, rather than for the safeguarding of our own institutions by the protection of the outposts, in the face of these statements in the message: ". . . the occasion has been judged proper for asserting, as a principle in which the *rights and interests of the United States are involved*, that the American continents . . . are henceforth not to be considered as subjects for future colonization by any European powers." ". . . to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to *our peace and safety*." ". . . we could not view any interposition . . . in any other light than as the manifestation of an *unfriendly disposition toward the United States*." "It is impossible that the allied powers should extend their political system to any portion of either continent without *endangering our peace and happiness*." Nor do I understand your distinction between our institutions and our territory since we wish to maintain both.

But all of the above is more or less of academic interest only and has little bearing on the question at issue, the Capper resolution. I used the term Monroe Doctrine in its generally accepted present day sense and more especially in that part of its meaning which prohibits, under penalty of war, the acquisition of American territory by a non-American power.

Your question "since when has any European power sought to destroy democratic and republican institutions either in the United States or anywhere in this Western Hemisphere" pays a splendid and well deserved tribute, quite unintentional on your part, to the efficacy of threatened force in preventing war and bloodshed, for it was under this, the most far-reaching and sustained threat of war perhaps ever pronounced by man, that this Hemisphere has had one hundred years of the almost complete immunity from attack which you point out. The exception, which I give you in answer to your question, occurred during our one period of weakness when we were engaged in protecting the Union from the attacks of the disruptionists of that day, when all the outside world knew that we could not at the time employ "war as an instrument of policy". Then, indeed, did our historic friends, the nation of Lafayette and of Briand, take immediate advantage of our weakness, send her troops across the sea, seize the land of our neighbor, and place the Austrian Maximilian upon the throne of empire. Hardly had our Civil War ended, however, when upon our demand and under threat of the most powerful army then in existence, the French troops were withdrawn and the Mexican empire collapsed.

It will require a vast amount of sound argument, I trust, to convince the American people that this Doctrine which has helped so enormously to preserve the peace on this continent, as your question clearly brings out, that this tried and trusted cornerstone of our foreign policy should ever be abandoned.

I have, to the best of my ability, stated my position clearly on every issue in your letters, answered every question, expressed or implied, specifically and without evasion, and reasoned the logic of the situation, coming to the conclusion that the present proposal is theoretically impossible of success and in practice would make a bad situation worse. I have done this at your instance and I trust that you will favor me similarly, to the end that we may lay before such of the American public as we may be able to reach, clear and succinct reasons for and against this most important proposal. I have confined myself to fact and argument, and have avoided generalities which please the ear and the heart but mean no more than the usual panegyrics on the unquestioned beauties of

everlasting peace or emotional appeals to risk everything on a gamble that shall bring us the millenium as the prize. We have both heard too many high pressure salesmen to be impressed by promises unsupported with facts and, alas! we have both seen too many lifetime savings, that should have maintained moderate comfort and ease, thrown away to the siren song of luxury and wealth only to bring misery and despair.

I, for one, am well satisfied with my small holding of plain looking but safe and time tested securities of that great corporation called the United States of America and shall not willingly trade them for the honey worded, azure tinted, red sealed certificates of Utopia.

May your closing sentence prove prophetic, that "America, growing richer and more powerful every day, will not accept this idea . . . in this generation"!

With cordial regards, I am

Sincerely yours,

(Signed) H. H. WOLFF.

Colorado Supreme Court Decisions

Editor's Note—It is intended in each issue of the Record to print brief abstracts of the decisions of the Supreme Court. These abstracts will be printed only after the time within which a petition for rehearing may be filed has elapsed without such action being taken, or in the event that a petition for rehearing has been filed the abstract will be printed only after the petition has been disposed of).

No. 12052

Public Utilities Commission, et al, vs. The People of the State of Colorado, on the relation of J. R. Hamrock.

Decided April 9, 1928
En Banc

Civil Service—Discretion of Public Utilities Commission—Mandamus

Facts—S. L. 1927, Ch. 134 empowered the Public Utilities Commission to appoint and employ inspectors and a salary for two inspectors was appropriated. The Civil Service Commission certified a list of those eligible for appointment, H. being first and one Dillon, second. Dillon only was appointed and H. brought mandamus to compel the Public Utilities Commission to appoint him.

Held—This position is that of employe only, not an office; therefore mandamus is the proper remedy.

No. 12060

Morris Schtul, versus M. A. Wilson.

Decided April 9, 1928.

Appeal and Error—Deceit—Evidence

Facts—Plaintiff alleged defendant induced him to accept the note of one Bentley in payment of a purchase by defendant, by misrepresenting Bentley's solvency. Summons demanded damages for fraudulently pretending that Bentley's note was good and the maker financially able to pay it. Judgment for plaintiff and findings of fraud, malice and wilful deceit.

Held—(1) Evidence shows Bentley did not own the property which defendant represented he did and on which plaintiff relied. This is prima facie proof of insolvency, without evidence of absence of other property.

(2) Plaintiff was not bound to investigate Bentley's solvency. Defendant's instruction to the contrary properly refused.